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Attorneys for Defendant/Counterclaimant Advanced Biologics, LLC

# UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

ALTEON, INC.

Plaintiff,

٧.

Civil Action No. 04-6024 (KSH)

Civil Action

ADVANCED BIOLOGICS, LLC

Defendant/Counterclaimant.

ANSWER TO PLAINTIFF'S COMPLAINT; SEPARATE DEFENSES; COUNTERCLAIM; JURY DEMAND

Defendant Advanced Biologics, LLC, with its principal place of business at 580 Union Square Drive, New Hope, Pennsylvania, by way of answer to plaintiff's Complaint, says:

#### NATURE OF THE ACTION

1. Defendant does not provide any response to this paragraph as it does not make any allegations against defendant.

## **JURISDICTION AND VENUE**

- 2. Defendant admits the allegations contained in this paragraph.
- 3. Defendant admits the allegations contained in this paragraph.

#### THE PARTIES

- 4. Defendant admits the allegations contained in this paragraph.
- 5. Defendant admits the allegations contained in this paragraph.

# FACTS COMMON TO ALL CLAIMS FOR RELIEF

6. Defendant admits the allegations contained in this paragraph.

- 7. Defendant is without sufficient information or knowledge to confirm or deny the allegations contained in this paragraph.
  - 8. Defendant denies the allegations contained in this paragraph.
- 9. Defendant is without sufficient information or knowledge to confirm or deny the allegations contained in this paragraph.
- 10. Defendant is without sufficient information or knowledge to confirm or deny the allegations contained in this paragraph.
- 11. Defendant is without sufficient information or knowledge to confirm or deny the allegations contained in this paragraph.
  - 12. Defendant denies the allegations contained in this paragraph.
  - 13. Defendant denies the allegations contained in this paragraph.
- 14. Defendant is without sufficient information or knowledge to confirm or deny the allegations contained in this paragraph.
- 15. Defendant admits the allegations contained in this paragraph regarding the date on which an invoice was issued, but denies the remaining allegations in this paragraph.
  - 16. Defendant denies the allegations contained in this paragraph.
  - 17. Defendant denies the allegations contained in this paragraph.
  - 18. Defendant denies the allegations contained in this paragraph.

#### FIRST CLAIM FOR RELIEF BREACH OF CONTRACT

- 19. Defendant repeats the responses provided above as if recited at length herein.
- 20. Defendant admits the allegations contained in this paragraph.
- 21. Defendant denies the allegations contained in this paragraph.
- 22. Defendant denies the allegations contained in this paragraph.

WHEREFORE, defendant Advanced Biologics, LLC denies that plaintiff, Alteon, Inc., is entitled to judgment against Advanced Biologics, LLC, and instead demands that plaintiff's complaint be dismissed with prejudice.

## SEPARATE DEFENSES

## FIRST SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for which relief can be granted.

#### SECOND SEPARATE DEFENSE

This Defendant denies that it was guilty of any negligence or conduct that was the proximate cause of any damage alleged to have been sustained by plaintiff.

#### THIRD SEPARATE DEFENSE

Any damages or injuries sustained by plaintiff were due to the negligence or conduct of other parties or entities or third persons over whom this Defendant exercised no control, direction or supervision and for whose actions this Defendant are not responsible.

#### FOURTH SEPARATE DEFENSE

Plaintiff was cognizant and aware of all the facts, circumstances and conditions existing and consented to, permitted, acquiesced, actively encouraged and/or voluntarily assumed the risks arising from the conduct involved in this litigation.

#### FIFTH SEPARATE DEFENSE

Plaintiff's Complaint is barred because there are supervening and/or intervening causes for any and all claims alleged.

#### SIXTH SEPARATE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, by the plaintiff's failure to comply with the terms of any agreement.

#### SEVENTH SEPARATE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, by the Doctrine of Estoppel.

# EIGHTH SEPARATE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, by the Doctrine of Waiver.

## **NINTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred, in whole or in part, by the Doctrine of Laches.

## TENTH SEPARATE DEFENSE

Plaintiff's Complaint is barred in whole or in part by the Statute of Frauds.

## **ELEVENTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the doctrine of unclean hands.

## TWELFTH SEPARATE DEFENSE

Plaintiff's Complaint is barred because plaintiff has failed to mitigate its damages.

# <u>DEMAND FOR STATEMENT OF DAMAGES</u> <u>PURSUANT TO LOCAL CIVIL RULE 8.1</u>

Defendant hereby demands service of a written statement of the amount of damages claimed in the Complaint within ten days of receipt of this demand.

#### **COUNTERCLAIM AGAINST ALTEON, INC.**

Defendant/Counterclaimant Advanced Biologics, LLC by way of counterclaim against plaintiff, Alteon, Inc., says:

#### JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action under 28 U.S.C. §1332, because the parties are citizens of different States and the amount in controversy exceeds the jurisdictional minimum.

2. Venue is proper in this district under 28 U.S.C. §1391 because a substantial part of the events and omissions giving rise to Advanced Biologics, LLC's claims occurred in this district.

#### COUNT ONE

#### (Breach of Contract)

- 3. Advanced Biologics, LLC realleges paragraphs 1 through 22 of its Answer.
- 4. Advanced Biologics, LLC provided clinical research services to plaintiff pursuant to contract.
- 5. Plaintiff failed to pay Advanced Biologics, LLC for all of the services provided by plaintiff.
- 6. As a direct and proximate result of plaintiff's breach of contract, Advanced Biologics, LLC has suffered significant monetary damages.

**WHEREFORE**, Advanced Biologics, LLC demands judgment against plaintiff for damages, attorneys' fees, costs, and such other relief as is just and equitable.

#### COUNT TWO

#### (Quantum Meruit)

- 7. Advanced Biologics, LLC realleges paragraphs 1 through 6 of this Counterclaim.
- 8. In the event it is determined that no contract existed in fact or in law between the parties with regard to the services provided by Advanced Biologics, LLC, it is averred that Advanced Biologics, LLC, at plaintiff's request, and with its knowledge, acquiescence, and acceptance, provided to plaintiff the services described above.
- 9. In the course of providing such services, Advanced Biologics, LLC necessarily incurred various costs, charges, labor, and use of its equipment and facilities.

10. Plaintiff has refused, despite demand, to pay the fair value for the services furnished, although such payment is past due.

WHEREFORE, Advanced Biologics, LLC demands judgment against plaintiff for damages, attorneys' fees, costs, and such other relief as is just and equitable.

#### **COUNT THREE**

# (Unjust Enrichment)

- 11. Advanced Biologics, LLC realleges paragraphs 1 through 10 of this Counterclaim.
- 12. Plaintiff received from Advanced Biologics, LLC the above-described clinical research services.
- 13. Plaintiff received the benefit therefrom and failed to make to Advanced Biologics, LLC proper payment or restitution to Advanced Biologics, LLC for the services and benefits received.
  - 14. Plaintiff has been unjustly enriched at the expense of Advanced Biologics, LLC.
- 15. Plaintiff's actions constitute an unjust retention of a benefit owed to Advanced Biologics, LLC, which is contrary to the principles of equity and justice.

WHEREFORE, Advanced Biologics, LLC demands judgment against plaintiff for damages, attorneys' fees, costs, and such other relief as is just and equitable

#### **JURY DEMAND**

Advanced Biologics, LLC demands a trial by jury on all issues so triable.

SCHENCK, PRICE, SMITH & KING, LLP Attorneys for Defendant/Counterclaimant, Advanced Biologics, LLC

Dated: 8/16/05

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Eric A. Inglis

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